

ORIGINAL

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JUL 17 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY **HAND DELIVER**

July 17, 1992

Donna R. Searcy  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

ORIGINAL  
FILE

ATTN: The Honorable Edward J. Kuhlmann  
Administrative Law Judge

RE: Central Florida Educational Foundation, Inc., et. al., MM  
Docket No. 92-33

Dear Ms. Searcy:

Transmitted herewith, on behalf of Central Florida Educational Foundation, Inc., is an original and six copies of its Opposition to Petition for Leave to Amend filed in connection with the above-referenced docketed proceeding.

Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully submitted,

MAY & DUNNE, CHARTERED

By: Joseph E. Dunne III  
Joseph E. Dunne III  
Attorney for Central Florida  
Educational Foundation, Inc.

JED:gmcA41  
enclosures

xc: All Per Attached Certificate of Service  
James S. Hoge

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BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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**JUL 17 1992**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 92-33
	)	
CENTRAL FLORIDA EDUCATIONAL	)	File No. BPED-881207MA
FOUNDATION, INC.	)	
Channel 203C3	)	
Union Park, Florida	)	
	)	
BIBLE BROADCASTING NETWORK, INC.	)	File No. BPED-890412MJ
Channel 202C2	)	
Conway, Florida	)	
	)	
SOUTHWEST FLORIDA COMMUNITY RADIO,	)	File No. BPED-891127MC
INC.	)	
Channel 202C2	)	
Conway, Florida	)	
	)	
MIMS COMMUNITY RADIO, INC.	)	File No. BPED-891127MD
Channel 202C1	)	
Oak Hill, Florida	)	
	)	
HISPANIC BROADCAST SYSTEM, INC.	)	File No. BPED-891128ME
Channel 202C3	)	
Lake Mary, Florida	)	
	)	
For Construction Permit for a	)	
New Noncommercial Educational FM	)	
Station	)	
	)	
TO: The Honorable Edward J. Kuhlmann		
Administrative Law Judge		

**OPPOSITION TO PETITION FOR LEAVE TO AMEND**

Central Florida Educational Foundation, Inc.(CFEF), by its undersigned attorney and pursuant to section 1.294 of the Commission's rules and regulations, 47 C.F.R. § 1.294 (1992), hereby submits this Opposition to the Petition for Leave To Amend (Petition) filed by Mims Community Radio, Inc. on July 13, 1992. As grounds for its Opposition CFEF shows and states as follows.

1. The instant Petition is the second Petition filed by Mims within the last two weeks. The first petition was patently unacceptable because, among other deficiencies, the proposed amendment did not protect the specified facilities of two of the applicants in this proceeding. That Petition was withdrawn, and a new amendment proposing new facilities at the same site tendered. This new proposal does not, like the first amendment, interfere with the proposals of existing applicants. The amendment's effect on WCPX-TV is less clear. What is clear, however, is that this proffered amendment also fails to satisfy the criteria for post-designation amendments required under Erwin O'Connor Broadcasting, Inc. 20 F.C.C.2d 140, 18 R.R.2d 820 (Rev. Bd. 1970).

2. Mims showing is particularly derelict in its showing of its "due diligence" in filing the amendment. Also wholly lacking is a showing that the purported need for the amendment "...could not reasonably have [been] foreseen..." as required for post-designation engineering amendments by section 73.3522(b)(2) of the Commission's rules and regulations. How can Mims satisfy a test of "due diligence" when it is now, on the eve of the hearing scheduled in this proceeding, attempting for the second time to do what it could have done at any time after the Hearing Designation Order published on March 10, 1992. Nor could the need for such an amendment could be considered "unforeseeable" either--Mims has known that its application was mutually exclusive with four others at least since January 19, 1990 when the Chief of the FM Branch advised the applicants, including Mims, in writing that they were

mutually exclusive. "Due diligence, like ambition, should be made of sterner stuff." Shoblom Broadcasting, Inc., 93 F.C.C.2d 1027, 53 R.R.2d 1203, 1205 (Rev. Bd. 1983). To this "due diligence" requirement is added the additional burden of showing that the amendment was "unforeseeable" as a post-designation engineering amendment. see, e.g., California Broadcasting Corp., 90 F.C.C.2d 800, 51 R.R.2d 1539 (1982). That burden is one which Mims has not attempted to shoulder.

3. Mims also asserts that its proposed amendment is not disruptive of the proceeding either, an assertion which is belied by the facts. Because of Mims' first amendment First Media Corporation, the licensee of WCPX-TV, Orlando, Florida, has petitioned the Commission to intervene in this proceeding. Adding an additional party is certainly "disruptive." One of the criteria of "good cause" under the O'Connor test is that "no modification or addition of issues or parties is necessitated." Mims' amendment clearly flunks that part of the test. In addition, consideration of Mims' proposal requires FAA action, which may, given the situation in Florida, be some time in forthcoming, if at all. Once again, Mims' "non-disruptive" amendment may be pending for some time leaving it and the other parties in this proceeding in a technical and legal limbo.

4. Mims "nondisruptive" amendment also proposes to change the proposed community of license to Samsula, Florida, a community which does not appear in the 1992 Rand McNally Road Atlas Index of communities in Florida (official notice requested). Mims'

amendment notes that Samsula is "an unincorporated community" (Mims amendment, Exhibit E-4). Mims has provided absolutely no showing to establish that Samsula is a community for allocation purposes, other than to cite unofficial census data which gives "Samsula's" population as 756 (Mims' amendment, Exhibit E-7). Samsula is clearly not an incorporated community with its own government, and there is no presumption, under Commission law, that a community of less than 1000 population needs local transmission service, cf. Ruarch Associates, 99 F.C.C.2d 338, 56 R.R.2d 1593 (Rev. Bd. 1984), or is a "community" for allocation purposes. Mims provides no other showing concerning its proposed community of license, such as evidence concerning its economic activity, local organizations, etc., see, e.g., FM Channel Assignments, Vimville, Mississippi, 49 Fed. Reg. 56613, 56 R.R.2d 256 (M. Med. Bur. 1983), that qualify "Samsula" as a community for 307(b) purposes.


5. Finally, as noted in paragraph 5 of its Opposition to Mims' first Petition, Mims' proposal suffers from an incurable defect whatever its other technical and legal deficiencies. Mims, as shown in CFEF's Petition to Enlarge Issues filed July 8, 1992, did not have the permission of its present site owner to specify that site in its application. Without "reasonable assurance" of its presently specified site, Mims cannot have good cause to amend to a new site. It is well settled that "an applicant will not be permitted to amend where it does not have reasonable assurance to begin with." South Florida Broadcasting Co., 99 F.C.C.2d 840, 845, 57 R.R.2d 495, n.12 (Rev. Bd. 1984). Rather than repeat again the

arguments concerning Mims' antenna site advanced in its July 8, 1992 Opposition, CFEF incorporates them here by reference since they apply with equal force to Mims' newest attempt to amend its application.

**WHEREFORE**, the foregoing premises considered, Central Florida Educational Foundation, Inc. respectfully urges the Presiding Officer to deny the Petition for Leave to Amend filed by Mims Community Radio, Inc. on July 13, 1992.

Respectfully Submitted,

**CENTRAL FLORIDA EDUCATIONAL  
FOUNDATION, INC.**

By:   
Joseph E. Dunne III  
Its Attorney

**MAY & DUNNE, CHARTERED**  
Suite 520  
1000 Thomas Jefferson Street, N.W.  
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July 17, 1992

CERTIFICATE OF SERVICE

I, Glinda M. Corbin, a secretary in the law offices of May & Dunne, Chartered, hereby certify that I have caused to be sent this 17th day of July 1992, via first class U.S. mail, postage prepaid, a true and correct copy of the foregoing OPPOSITION TO PETITION FOR LEAVE TO AMEND to the following:

\*The Honorable Edward J. Kuhlmann  
Administrative Law Judge  
Federal Communications Commission  
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Washington, D.C. 20554

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By: Glinda M. Corbin  
Glinda M. Corbin

\*Hand Deliver